**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 6161 of 1993**

**For Approval and Signature:**

**HONOURABLE THE CHIEF JUSTICE Y.R.MEENA**

**HONOURABLE MR.JUSTICE A.S.DAVE**

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**JAGTJIT COTTON TEXTILE MILLS LTD.**
**Versus**
**SURAT MUNICIPAL CORPORATION**

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**Appearance :**

**Mr. A.C. Gandhi for the petitioner**
**Mr. Prashant Desai for respondent-Surat Municipal Corporation**

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**CORAM : HONOURABLE THE CHIEF JUSTICE Y.R.MEENA**

**and**

**HONOURABLE MR.JUSTICE A.S.DAVE**

**Date : 04/05/2007**

C.A.V. Judgment

[Per: A.S. Dave, J.]

1 This petition under Articles 226 and 227 of the Constitution of India challenges the order dated 18/20.5.1993 passed by the respondent, Surat Municipal Corporation, by which, recovery of differential octroi duty, at the reduced rate of 11%, wrongly availed of by the petitioner for the period commencing from 1986-1987 to 1990-1991, was sought to be initiated.

2 The petitioner is a Public Limited Company carrying on the business of manufacturing and dealing in synthetic yarn. The petitioner has its branch office within the municipal limits of Surat Municipal Corporation, whereas it manufactures yarn at its factory situated in the State of Punjab. The petitioner sends goods on the basis of branch transfer to its branch at Surat and such goods attract liability of payment of octroi duty. The petitioner entered into an agreement/arrangement with one Sterling Steels & Wires Limited to provide yarn manufactured by the petitioner at Punjab and send the same to Surat to its branch office by branch transfer. The above arrangement was worked out between the petitioner and Sterling Steels & Wires Limited upon the request made to the petitioner by the said Company to manufacture synthetic filament yarn under the brand name of the petitioner-company. It is also not in dispute that thereafter Sterling Steels & Wires Limited has been amalgamated with the petitioner-company.

3 At the outset, it is brought to our notice that similarly situated companies like the petitioner and importers of yarn, namely, Indian Rayon Corporation Limited, Century Spinning & Weaving Mills Limited, Century Enka Limited, challenged the decision of the respondent-Corporation to levy octroi duty on the goods sent by way of branch transfer at 100% sales value of the goods, before this Court by way of

filing writ petitions, being Special Civil Application Nos.1989 of 1978, 1990 of 1978 and 1991 of 1978 and, on 9th October 1980, an order came to be passed on the basis of consensus arrived at between the parties, inter alia, providing that the Corporation shall levy and recover octroi duty on the costs of the goods which would amount to 89% of the sale value of the goods after taking into consideration various components of the octroi duty, sales-tax, branch expenses, etc. incurred by the Branch after import of the goods within the municipal limits of the Corporation.

3.1 Even thereafter also, some other companies, namely, Jagatjit Cotton Textile Mills Limited, National Rayon Corporation Limited and Kesoram Rayons filed Special Civil Application Nos. 4262 of 1983, 6405 of 1983 and 1128 of 1984, since the Corporation continued to recover the amount of octroi by considering 100% of the sale value of the goods imported. The Division Bench of this Court, by judgment and order dated 12/13.11.1984, allowed the above petitions by directing the respondent-Corporation to assess and recover octroi duty on the same basis as prescribed under the order of this Court of October 9, 1980 passed in Special Civil Application No.1989 of 1978 and allied matters with effect from the date on which the respondent-Corporation refused to extend the benefit of the aforesaid order.

3.2 The main consideration weighed with the Division Bench of this Court was the discriminatory treatment meted out to the petitioner-

companies in violation of Article 14 of the Constitution of India. The Division Bench held that:

> "There was no satisfactory ground or reason for the Corporation to treat the petitioner-companies before us in a different manner since they are similarly situate. It is no doubt true that these petitioner-companies are not parties to that settlement but public authority cannot act in a different manner in the matter of levy and recovery of taxes in cases of assessees who are identical and similarly situated."

4 When this petition came up for admission hearing, the Division Bench of this Court {Coram: A.P. Ravani & C.V. Jani, JJ.}, by order dated 24th September 1993, issued Rule and granted stay of impugned recovery of octroi duty on the condition of furnishing a bank guarantee and an undertaking as stipulated therein.

5 Learned counsel for the petitioner has relied upon the above two judgment and orders dated 9th October 1980 and 12/13th November 1984 of the Division Bench of this Court and submitted that the petitioner-company is exactly similarly situated and importing filament yarn and, therefore, levy of octroi duty at the rate of 100% of sale value of the goods is unjust, unreasonable, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. It is also contended that arrangement worked out between the petitioner-company and Sterling

Steels & Wires Limited is a business arrangement and the brand-name of the petitioner-company was the main aspect to be looked into establishing the fact that the goods were manufactured by the petitioner-company. It is also submitted that, later on, even said Sterling Steels & Wires Limited came to be amalgamated with the petitioner-company. It is also submitted that recovery of differential octroi duty is not permissible in view of unreasonable delay in initiating action by the respondent-Corporation, particularly when the respondent-Corporation had accepted payment of octroi duty at the rate of 89% of sale value of the goods.

6 The learned counsel for the respondent-Corporation has submitted that the petitioner-company is not entitled to benefit of levy of 89% of octroi duty on the sale value of the goods, in view of the fact that the importer of the goods was a different company and not the petitioner. It is also submitted that the due procedure is not followed by the petitioner-company for approaching the Corporation for getting the benefit of levy of octroi duty of 89% of the sale value of the goods, like other companies, who were given such benefits.

7 Heard the learned counsel appearing for the parties and perused the record.

8 For the purpose of levying octroi duty on ad-velorum basis, the “Value of Goods” has been defined by Surat Municipal Corporation Octroi Rules. The relevant Rule 2(20) reads as under:

> “2(20) 'Value of the goods' where the Octroi is charged ad-velorum shall mean the value of the goods made-up of the cost price of the goods as ascertained from the original invoice plus shipping dues, insurance, customs duty, excise duty, sales-tax, vend fees, freight charges, current charges and all other incidental charges incurred by the Importer till the arrival of the goods at the Import Naka”.

9 In view of the above, value of the goods for the purpose of octroi duty is to consist of cost price, shipping dues, insurance, custom duty, excise duty, sales-tax, freight charges and all other incidental charges incurred by the importer till the arrival of the goods at the import naka. However, the respondent-Corporation has agreed with other yarn and spinners companies to give reduction of rate, insurance and other incidental charges by reducing octroi duty from 100% to 89%, meaning thereby, benefit of 11% on payment of octroi duty of the sale value of the goods and the said action of the respondent-Corporation was on the basis of the orders passed by this Court in the cases of similarly situated companies in Special Civil Application No.1990 of 1978 dated 9th

October 1980 and Special Civil Application No.4262 of 1983 and allied matters vide order dated 12/13.11.1984, wherein, this Court reiterated that in the matter of levy and recovery of tax in the cases of similarly situated assessees, the public authority cannot discriminate other companies in a different manner in violation of Article 14 of the Constitution of India Therefore, in the present case also, the petitioner-company, being similarly situated like those companies, who were given the benefit of 11% reduction in levy of octroi duty by the respondent-Corporation, cannot be denied such benefit, only on the ground that the company imported the goods was a different entity, even though an arrangement has been worked out by the importer company to get the goods manufactured by the petitioner-company and to market it with the brand-name of the petitioner-company. Not only that, but, when the respondent-Corporation has accepted the arrangement worked out between the petitioner-company and Sterling Steels & Wires Limited for the period of five years and granted reduction of 11% of octroi duty of the sale value of the goods, recovery of octroi duty, after lapse of period of about 4 to 5 years, is neither justifiable nor reasonable. The respondent-Corporation has failed to show any justification or reason, different than those existed in the above matters, so as to distinguish and treat the petitioner in a different manner.

9.1 The petitioner-Company deserves treatment on par with other companies importing yarn by way of branch transfer. Considering all relevant aspects, we find that the petitioner-Company is similarly situated like the companies importing yarn in earlier litigation and were granted reduction of 11% of octroi duty payment by this Court, hence, the petitioner-Company deserves benefit of reduction of octroi duty by 11% and to pay octroi at the rate of 89% of sale value of the goods.

10 Thus, we hold that the impugned action of the respondent-Corporation directing the petitioner-company to deposit the amount of Rs.5,54,821.24 ps is arbitrary, unreasonable, discriminatory and violative of Article 14 of the Constitution of India and contrary to the orders passed by this Court dated 11/13.11.1984 in Special Civil Application No.4262 of 1983 and allied matters.

11 In the result, we are inclined to accept the prayer made by the petitioner-Company and quash and set aside the impugned order dated 18/20.5.1993 of the respondent-Corporation and direct the respondent-Corporation not to recover difference of octroi duty at the rate of 100% of sale value of the goods for the period commencing from 1986-87 to 1990-1991 and not to insist for deposit of amount of Rs.5,54,821.24 ps from the petitioner-company.

12 Rule is made absolute with no order as to costs.

(Y.R. MEENA, C.J.)

(ANANT S. DAVE, J.)

(swamy)